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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,778	07/02/2002	Peter A. Crouch	ARD106USA	9526
24339	7590	07/13/2004	EXAMINER	
JOEL D. SKINNER, JR. SKINNER AND ASSOCIATES 212 COMMERCIAL ST. HUDSON, WI 54016			FOREMAN, JONATHAN M	
		ART UNIT	PAPER NUMBER	
			3736	

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/088,778	CROUCH ET AL.
	Examiner	Art Unit
	Jonathan ML Foreman	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 12 April 2004.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-5,7,9-11 and 13 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5,7,9-11 and 13 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on 12 April 2004 is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All
 - b) Some *
 - c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Drawings

1. The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on 4/12/04 have been approved. A proper drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The correction to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,442,361 to Renholdt.

In reference to claims 1, 2, 3 and 7, Renholdt discloses applicant's claimed invention including a housing (10) having a closable lid (12), the lid (12) being securable to the housing to close the housing (Col. 2, lines 64 – 69), at least part of the housing having a strainer member (11; Col. 2, lines 62 – 63) having a plurality of openings of a uniform size adapted to allow water entering the housing to escape through the strainer member, but to collect, and retain particulate matter carried by the water. The openings are sufficiently small to ensure that human cells (hair) are retained. The housing is of dimensions to allow it to be received within and seal the outlet of a bath, shower or wash basin (Col. 1, line 55 – Col. 2, line 58). The lid (12) is securable on the housing by screw threads (Col. 2, lines 96 – 110).

4. Claims 1, 2 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,467,772 to Appelhoff.

In reference to claims 1 and 2, Appelhoff discloses applicant's claimed invention including a housing having a closable lid (7), the lid (7) being securable to the housing to close the housing, at least part of the housing having a strainer member (9) having a plurality of openings of a uniform size adapted to allow water entering the housing to escape through the strainer member, but to collect, and retain particulate matter carried by the water (Col. 2, lines 64 – 77). The housing is of dimensions to allow it to be received within and seal the outlet of a bath, shower or wash basin (Col. 1, lines 19 – 27).

In reference to claim 10, Appelhoff discloses locating an evidence collection device within the outlet of a bath, shower or wash basin (Col. 1, lines 19 – 27), allowing an individual to bath, shower or wash, allowing water to escape from the bath, shower or basin, the water entering the housing and passing through the strainer member, particulate matter carried into the housing being unable to pass through the strainer member and being retained within the housing (Col. 2, lines 64 – 77). Placing the lid (7) on the device would trap the collected matter within the housing.

5. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,402,407 to Andrews.

In reference to claim 13, Andrews discloses applicant's claimed invention including a flexible liner (18) and a housing (22) having a closable lid (28), the lid being securable to the housing to close the housing (Col. 2, lines 50 – 60), at least part of the housing having a strainer member (22) having openings adapted to allow water entering the housing to escape through the strainer member, but to collect, and retain particulate matter carried by the water (Col. 1, lines 33 - 39). Andrews discloses

liner (18) having an outlet (20), the housing (22) being secured to the liner at the outlet (Col. 2, lines 41 – 43).

6. Claims 1, 2 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,043,082 to Hermann, Jr. et al.

In reference to claims 1, 2 and 7, Hermann, Jr. et al. discloses applicant's claimed invention including a housing having a closable lid (16), the lid being securable to the housing to close the housing (Col. 3, lines 46 – 49) at least part of the housing having a strainer member (12) having a plurality of openings formed therein (Col. 3, line 67 – Col. 4, line 2) and adapted to allow water entering the housing to escape through the strainer member, but to collect, and retain particulate matter carried by the water. The strainer member has a plurality of openings being sufficiently small to ensure that human cells are retained within the housing (Col. 3, line 67 – Col. 4, line 2). The lid of the housing is securable in position by screw threads (13a). The housing has a shape that would allow it to be received within and seal an outlet of at least one of a bath, shower, a wash basin and mortuary table.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,467,772 to Appelhoff in view of U.S. Patent No. 4,232,407 to Williams.

In regards to claims 4 and 5, Appelhoff discloses a plurality of openings, but fails to disclose the openings being a non-uniform size wherein the openings in the central part are smaller than those located toward the edges. Williams discloses a strainer for positioning within an outlet of a washbasin (Col. 1, lines 5 – 7) having openings of a non-uniform size. The openings in the central part are shown (Figure 1) to be smaller than those located toward the edges (15). It would have been obvious to one having ordinary skill in the art, to modify the openings as disclosed by Appelhoff to be a non-uniform size with the larger openings being toward the edges as taught by Williams in order to retain solid materials of desired sizes (Col. 2, lines 42 – 45).

9. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 1,467,772 to Appelhoff in view of DE 4434544 C1 to Hartmann et al.

In reference to claim 11, Appelhoff discloses collecting evidence in a bath, shower or wash basin, but fails to disclose wiping the bath, shower or wash basin using a cloth or wipe to collect matter adhering thereto. Hartmann et al. discloses a wipe (2) for collecting evidence from a victim or a perpetrator by wiping. It would have been obvious to one having ordinary skill in the art at the time the invention was made to wipe the bath, shower or basin having the collecting device as disclosed by Appelhoff, when used by a victim or perpetrator, in order to gather and protect any comparative material, as taught by Hartmann et al., remaining in the shower, bath or wash basin.

10. Claims 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,040,252 to Taggart in view of U.S. Patent No. 1,442,361 to Renholdt.

In regards to claims 9 and 13, Taggart discloses a closeable (Figure 8) flexible (Col. 1, lines 30 – 32) liner (10) for placing in a wash tub having an outlet. However, Taggart fails to disclose a housing having a closable lid, the lid being securable to the housing to close the housing, at least a part of the housing defining a strainer member having to close the housing, at least a part of the

housing being defined by a strainer member having a plurality of openings formed therein and adapted to allow water entering the housing to escape therefrom through the strainer member and to collect and retain within the housing particulate matter carried by the water. However, Renholdt discloses applicant's claimed invention including a housing (10) having a closable lid (12), the lid (12) being securable to the housing to close the housing (Col. 2, lines 64 – 69) , at least part of the housing having a strainer member (11; Col. 2, lines 62 – 63) having a plurality of openings of a uniform size adapted to allow water entering the housing to escape through the strainer member, but to collect, and retain particulate matter carried by the water. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include within the outlet of the liner as disclosed by Taggart, a device as taught by Renholdt in order to prevent unwanted particulate matter from entering into the drainage system.

Response to Arguments

Applicant's arguments filed 4/12/04 have been fully considered but they are not persuasive. In regards to Appelhoff, Applicant has asserted that Appelhoff fails to disclose an arrangement having a lid securable to the housing. Applicant states that the lid (plug 7) merely rests in the housing. However, the Examiner considers the lid to be securable to the housing in that when in use the lid is made fast (Merriam-Webster's, 10th ed.) to the housing. In regards to Andrews, Applicant has asserted that the lid is not securable to the housing, however, the examiner disagrees in that the lid is made fast (Merriam-Webster's, 10th ed.) to the housing (Col. 2, lines 54 – 60). Additionally, Applicant has asserted that Andrews does not disclose a liner. However, the Examiner feels that element (18) as disclosed by Andrews is a liner in that it placed on the inner surface of the basin (Merriam-Webster's, 10th ed.). Additionally, Applicant points out that Appelhoff and Andrews are outlet strainers designed to prevent clogging of drains, and is not intended to serve as an

evidence collection device. However, a recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus that differentiates it from a prior art reference disclosing the structural limitations of the claim. *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA 1947); *In re Yanush*, 477 F.2d 958, 177 USPQ 705 (CCPA 1973); *In re Finsterwalder*, 436 F.2d 1028, 168 USPQ 530 (CCPA 1971); *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963); *Ex parte Masham*, 2 USPQ2d 1647 (BbPatApp & Inter 1987). In regards to Hermann, Applicant asserts that the housing disclosed by Hermann is not intended to fit into and seal a bath, shower, wash basin or mortuary table outlet. However, the limitation “to allow it to be received within and seal an outlet of at least one of a bath, shower, a wash basin and mortuary table” is a functional limitation with respect to the manner in which the apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus. Hermann is capable of performing such a function.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be

calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (703) 305-5390. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mary Beth Jones can be reached on (703) 308-3400. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.


JMLF

July 12, 2004


MARY BETH JONES
ACTING SUPERVISORY PATENT EXAMINER